



## **Order under Sections 69 and 88.1 Residential Tenancies Act, 2006**

**Citation:** Weninger v Damerchie, 2023 ONLTB 49046

**Date:** 2023-07-07

**File Number:** LTB-L-018299-23

**In the matter of:**

BASEMENT UNIT, 527 QUEENSDALE AVE  
EAST  
HAMILTON ON L8V1L1

**Between:**

Daniel Weninger

Landlord

**And**

Zaya Damerchie

Tenant

Daniel Weninger (the 'Landlord') applied for an order to terminate the tenancy and evict Zaya Damerchie (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (the 'L1 application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant (the 'L2 application'). The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct (the 'Section 88.1 application').

This application was heard by videoconference on June 29, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was assisted by his daughter, Autumn Weninger, and represented by Jordan Nieuwhof. The Tenant represented himself throughout but consulted with Tenant Duty Counsel prior to the commencement of the hearing.

**Determinations:**

1. At the beginning of the hearing the Landlord requested permission to withdraw the L2 application and the Section 88.1 claim. In accordance with subsection 200(4) of the Act, I consented to the withdrawal of those parts of the application.

THE PRELIMINARY ISSUE WITH RESPECT TO THE SECOND ORIGINAL TENANT

2. The parties agree that the tenancy commenced by way of a written tenancy agreement that named the Tenant and one other person as joint tenants. The second named tenant moved out in December of 2022 or January of 2023. The remaining Tenant has no contact with him.
3. The Tenant says he was only responsible for paying half the monthly rent of \$1,800.00. His portion is \$900.00 monthly. Alternatively, the second tenant should be a named party.
4. Although the two original tenants may have decided between themselves that each was responsible for half of the rent, that is not what the agreement was with the Landlord. The tenancy agreement was with both tenants as joint tenants. Joint tenants are jointly and severally liable for the rent. That means each tenant is legally responsible for the entirety of any unpaid rent. So the Board is required to deal with the entirety of the rent arrears owing and not just the half that the Tenant feels is his responsibility. He is legally liable for the entire amount but may wish to take steps to pursue the former tenant for the amount the Tenant considers to be the former tenant's responsibility.
5. With respect to the former tenant not being named as a party, this application was filed on March 2, 2023, when he had already moved out of the rental unit giving sole possession to the Tenant. In other words, he was no longer in possession. An application in Form L1 can only be filed as against a tenant in possession. So I am not prepared to make a finding that it was a mistake for the Landlord to file the application as against the Tenant alone.

THE APPLICATION FOR NON-PAYMENT OF RENT

6. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful monthly rent is \$1,800.00. It is due on the 1st day of each month.
9. No payment has been made since December 1, 2022. The rent arrears owing for the period ending June 30, 2023 total \$12,600.00.
10. Based on the monthly rent, the daily rent/compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

12. The Landlord collected a rent deposit of \$1,800.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenant asks for additional time to move. He has been unable to find a new place to live due to the litigation the Landlord has brought, and the Landlord is amenable to giving him until July 31, 2023. But the Tenant has paid no rent since December 1, 2022 and the tenancy is not viable, so any additional delay would be unreasonable and unfair in all of the circumstances here.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$12,786.00 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the Board to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that comes due after July 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before July 31, 2023.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$10,861.29. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$59.18 per day for the use of the unit starting June 30, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before July 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 19, 2023 at 6.00% annually on the balance outstanding.

8. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after August 1, 2023.

**July 7, 2023**

**Date Issued**

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 Ruth Carey  
 Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto  
 ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on February 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

**Schedule 1  
 SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 31, 2023**

Rent Owing To July 31, 2023	\$12,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$12,786.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$12,516.22
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$40.93
<b>Total amount owing to the Landlord</b>	<b>\$10,861.29</b>

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Plus daily compensation owing for each day of occupation starting June 30, 2023	\$59.18 (per day)
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